



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2022-0196; FRL-9701-02-R3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Removal of Stage II Gasoline Vapor Recovery Program Requirements and Revision of Stage I Gasoline Vapor Recovery Program Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision, made in two separate submittals, by the State of Delaware. This revision removes requirements for gasoline vapor recovery systems installed on gasoline dispensers, the purpose of which are to capture emissions from vehicle refueling operations, otherwise known as Stage II vapor recovery. This revision also strengthens Delaware's requirements for gasoline vapor recovery systems that capture emissions from storage tank refueling operations, otherwise known as Stage I vapor recovery. Specifically, this action removes from the approved SIP prior-approved Stage II requirements applicable to new and existing gasoline dispensing facilities (GDFs). All GDFs will be required to decommission their Stage II vapor recovery systems (VRS) and to install, maintain, and periodically test Stage I enhanced vapor recovery systems (EVRS). Delaware's SIP revision establishes a compliance schedule for these changes and includes a demonstration that removal of Stage II requirements is consistent with the Clean Air Act (CAA) and meets all relevant EPA guidance.

DATES: This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R03-OAR-2022-0196 at <https://www.regulations.gov>. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not

publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Yarina, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2103. Mr. Yarina can also be reached via electronic mail at Yarina.Adam@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we refer to EPA. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose

II. Final Action

III. Incorporation by Reference

IV. Statutory and Executive Order Reviews

I. Background and Purpose

On April 6, 2022 (87 FR 19828), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed approval of Delaware’s request to revise its requirements for Stage II and Stage I vapor recovery for new and existing GDFs in the State of Delaware. The formal SIP revisions being approved were submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on November 17, 2020, and July 14, 2021.¹ The details of Delaware’s November 17, 2020, and July 14, 2021

¹ Both SIP submittals can be found in Docket ID No. EPA-R03-OAR-2022-0196 at <https://www.regulations.gov>, attached to their respective transmittal letters from DNREC.

SIP submittals and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. See 87 FR 19828 (April 6, 2022). The NPRM also contained a detailed analysis showing that Delaware's removal of the Stage II requirements would not interfere with any Delaware area's ability to attain or maintain any national ambient air quality standard (NAAQS), or any other applicable requirement of the CAA. The public comment period for the NPRM closed on May 6, 2022. EPA received no public comments on the NPRM.

II. Final Action

As proposed in the NPRM,² EPA is approving Delaware's November 17, 2020, and July 14, 2021 SIP revisions for statewide removal of Stage II vapor recovery requirements, statewide prohibition of Stage II VRS installation at new GDFs, the statewide mandatory decommissioning of Stage II VRS at existing GDFs by December 31, 2021, and the statewide mandatory installation of Stage I EVRS at all GDFs by December 31, 2025. Specifically, EPA is approving Delaware's revised 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions*, and incorporating it into the Delaware SIP. EPA is approving this SIP revision because it meets all applicable requirements of the CAA and relevant EPA guidance and because approval of this SIP revision will not interfere with attainment or maintenance of the ozone NAAQS.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the State of Delaware's revised 7 DE Admin Code 1124 Section 26.0 *Gasoline Dispensing Facility Stage I Vapor Recovery* and Section 36.0 *Vapor Emission Control at Gasoline Dispensing Facilities*, which will include the revisions issued on August 17, 2015 via 19 DE Reg. 199 (state effective date September 11, 2015), the revisions issued on June 11, 2020 via 24 DE Reg. 61 (state effective date July 11, 2020), and the revisions issued on March 11, 2021 via 24 DE Reg. 944 (state effective date April 11, 2021), as described in

² See 87 FR 19828 (April 6, 2022).

Sections I and II of this preamble and set forth below in the amendments to part 52.

EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks

subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule to remove Delaware's Stage II vapor recovery requirements does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days**

after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action.

This action to remove Stage II requirements and revise Stage I requirements for Delaware may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In § 52.420, the table in paragraph (c) under the heading “1124 Control of Volatile Organic Compound Emissions” is amended by revising the entries for “Section 26.0” and “Section 36.0” to read as follows:

§ 52.420 Identification of plan.

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(c)* * *

EPA-Approved Regulations and Statutes in the Delaware SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
* * *	* * *	* *		
1124 Control of Volatile Organic Compound Emissions				
**	*	*	*	**
Section 26.0	Gasoline Dispensing Facility Stage I Vapor Recovery	04/11/2021	<u>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</u>	<p>Includes revisions issued on August 17, 2015 via 19 DE Reg. 199 (state effective date September 11, 2015), revisions issued on June 11, 2020 via 24 DE Reg. 61 (state effective date July 11, 2020), and revisions issued on March 11, 2021 via 24 DE Reg. 944 (state effective date April 11, 2021).</p> <p>Includes mandate to install, maintain, and periodically test Stage I enhanced vapor recovery systems (EVRS) at Gasoline Dispensing Facilities (GDFs) in Delaware; associated compliance schedules; and</p>

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
				updates related incorporations by reference.
**	*	*	*	**
Section 36.0	Vapor Emission Control at Gasoline Dispensing Facilities	04/11/2021	<u>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</u>	<p>Includes revisions issued on August 17, 2015 via 19 DE Reg. 199 (state effective date September 11, 2015), revisions issued on June 11, 2020 via 24 DE Reg. 61 (state effective date July 11, 2020), and revisions issued on March 11, 2021 via 24 DE Reg. 944 (state effective date April 11, 2021).</p> <p>Includes mandate to decommission Stage II vapor recovery systems (VRS) at Gasoline Dispensing Facilities (GDFs) in Delaware; associated compliance schedules; and updates related incorporations by reference.</p>
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